



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Salt Lake Field Office
2370 South 2300 West
Salt Lake City, Utah 84119
ph: (801) 977-4300; Fax: (801) 977-4397
www.ut.blm.gov/saltlake_fo



In Reply Refer To:

3809

U-77020

(UT-023)

JUN 22 2005

Certified Mail 7003 1010 0005 1876 0366

Return Receipt Requested

Mr. Sidney K. Hullinger
Senior Vice President
McFarland & Hullinger
P.O. Box 238
Tooele, Utah 84074

Dear Mr. Hullinger:

It has come to the attention of the Salt Lake Field Office, Bureau of Land Management (BLM) that crushed material from your SiO₂ 1-6 mine located in Sections 21 and 28, T. 1 N., R. 6 W., Tooele County, Utah, serialized UTU-077020, are being sold as common variety mineral material.

Your operation is authorized by the mining laws on public lands where the mineral interest is reserved to the United States. This authorization involves locatable minerals, including metallic minerals; some industrial minerals, such as gypsum; and a number of other non-metallic minerals that have a unique property which gives the deposit a distinct and special value. This authorization does not apply to salable minerals. Saleable minerals, such as common varieties of sand, gravel, stone, and pumice, are not subject to location under the mining laws. Said activity constitutes unauthorized use.

As per 43 CFR 3601.71, What constitutes unauthorized use?

(a) Except as provided in paragraph (b) of this section, you must not extract, sever, or remove mineral materials from public lands under the jurisdiction of the Department of the Interior, unless BLM or another Federal agency with jurisdiction authorizes the removal by sale or permit. Violation of this prohibition constitutes unauthorized use.

Unauthorized users are liable for damages to the United States, and are subject to prosecution for such unlawful acts (43 CFR 3601.72). Damages may include, but are not limited to costs associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass, twice the fair market value of the resource at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

At this time you need to cease and desist all types of mining activity associated with this unauthorized use, contact this office to resolve any possible trespass issues that may have occurred and request a mineral material sale for any additional material needed.

RECEIVED

JUN 23 2005

DIV. OF OIL, GAS & MINING

This decision does not constitute: certification of ownership to any persons or company named in your Plan; recognition of the validity of any mining claims named in your Plan; or recognition of the economic feasibility of the operation proposed.

Provisions for Appeal

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.804, you may have the Utah BLM State Director review this decision. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the Utah State Director does not make a decision on whether to accept your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You then have 30 days in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass the State Director review, this decision may be appealed directly to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Salt Lake Field Office, located at 2370 South 2300 West, Salt Lake City, Utah, 84119, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted,
and
4. Whether the public interest favors granting the stay.

Thank you for cooperation with this matter. If you have any questions, or require additional information, please contact Larry Garahana of my staff at (801) 977-4371.

Sincerely,

A handwritten signature in black ink, appearing to read "David H. Murphy".

Acting

David H. Murphy
Assistant Manager
Nonrenewable Resources

cc: Tom Munson, UDOGM M/045/046